

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**TERRY RAY BAIN,**

**Defendant.**

**CASE NO. 8:08CR210**

## TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 147). The government adopted the PSR (Filing No. 144). The Defendant filed motions for deviation or variance (Filing No. 149) and downward departure (Filing No. 151). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the 2-level enhancement in ¶ 53 under U.S.S.G. § 2B1.1(b)(4) assessed because, according to the PSR, the offense involved receiving stolen property and the Defendant sold some of the stolen property. The Defendant reserved his right to challenge the enhancement in the plea agreement, and the matter will be heard at sentencing. The government has the burden by a preponderance of the evidence.

IT IS ORDERED:

1. The Defendant's objections to ¶ 53 will be heard at sentencing;
2. The Defendant's motions for deviation or variance (Filing No. 149) and downward departure (Filing No. 151) will be heard at sentencing;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

6. If the parties need more than 30 minutes for the sentencing hearing, they should immediately contact Edward Champion and reschedule the hearing.

DATED this 5<sup>th</sup> day of January, 2010.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge